

**IN THE MATTER OF:**

**International Smelting and Refining  
Site  
Tooele County, Utah**

**Atlantic Richfield Company**

**Respondent.**

**IN THE MATTER OF:**

**International Smelting and Refining  
Site  
Tooele County, Utah**

**Atlantic Richfield Company**

**Respondent.**

**UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL RESPONSE  
ACTIVITIES**

**U.S. EPA Region VIII**  
**Docket No. CERCLA-08-2004-0016**

**Proceeding Under Section 106(a) of the  
Comprehensive Environmental  
Response, Compensation, and Liability  
Act, as amended, 42 U.S.C. § 9606(a)**

## TABLE OF CONTENTS

I. <u>JURISDICTION AND GENERAL PROVISIONS</u> .....	2
II. <u>PARTIES BOUND</u> .....	2
III. <u>DEFINITIONS</u> .....	2
IV. <u>FINDINGS OF FACT</u> .....	4
Site Description and History.....	4
Release or Threatened Release .....	5
Endangerment.....	5
Respondent.....	6
Response Actions.....	7
V. <u>CONCLUSIONS OF LAW AND DETERMINATIONS</u> .....	7
VI. <u>ORDER</u> .....	8
Notice of Intent to Comply.....	8
Designation of Contractor, Project Coordinator, and On-Scene Coordinator.....	8
Work to be Performed.....	9
Reporting.....	11
Final Report.....	11
Access to Property and Information.....	11
Record Retention, Documentation, Availability of Information.....	12
Off-site Shipments.....	12
Compliance with Other Laws.....	13
Emergency Response and Notification of Releases.....	13
VII. <u>AUTHORITY OF THE ON-SCENE COORDINATOR</u> .....	13
VIII. <u>ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE</u> .....	14
IX. <u>RESERVATION OF RIGHTS</u> .....	14
X. <u>OTHER CLAIMS</u> .....	14
XI. <u>MODIFICATIONS</u> .....	15
XII. <u>NOTICE OF COMPLETION</u> .....	15
XIII. <u>ACCESS TO ADMINISTRATIVE RECORD</u> .....	15
XIV. <u>OPPORTUNITY TO CONFER</u> .....	15
XV. <u>INSURANCE</u> .....	16
XVI. <u>ADDITIONAL REMOVAL ACTIONS</u> .....	16
XVII. <u>SEVERABILITY</u> .....	16
XVIII. <u>EFFECTIVE DATE</u> .....	17

APPENDICES: 1a and b - Site Maps  
2 - Action Memorandum  
3 - Sample results

## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended (“CERCLA”), and delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the undersigned EPA officials.

2. This Order pertains to property located at the International Smelting and Refining Site (“IS&R Site”), located on the western slope of the Oquirrh Mountains in Tooele County, Utah, and depicted generally on the map attached as Appendix 1a to this Order. In particular, this Order pertains to the residential area within, or known as, the Township of Pine Canyon (“Pine Canyon” or “Site”) depicted on the map attached as Appendix 1b to this Order. This Order requires the Respondent to conduct the Removal Actions described herein to abate an imminent and substantial endangerment to the public health or welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

3. EPA has notified the State of Utah of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and is binding upon Respondent and Respondent's heirs, directors, officers, employees, agents, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“Action Memorandum” shall mean the Action Memorandum issued by EPA for the Pine Canyon Residential Area of the International Smelting and Refining Site on July 16, 2004, and attached to this Order as Appendix 2.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period

of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Order as provided in Section XVIII.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the United States Code, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time of accrual.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Order” shall mean this Unilateral Administrative Order and all appendices attached hereto, which are hereby incorporated by reference. In the event of conflict between this Order and any appendix, this Order shall control.

“Paragraph” shall mean a portion of this Order identified by an arabic numeral.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq., (also known as the Resource Conservation and Recovery Act).

“Removal Actions” shall mean those activities to be undertaken by Respondent in accordance with the Residential Soil Removal Work Plan as approved by EPA pursuant to this Order.

“Section” shall mean a portion of this Order identified by a roman numeral.

“Site” or “Pine Canyon” shall mean the residential area within, or known as, the Township of Pine Canyon, comprising part of the International Smelting & Refining National Priority List Superfund Site, in Tooele County, Utah, depicted generally on the map attached as Appendix 1a and in more detail on the map attached as Appendix 1b to this Order. The Site also encompasses any areas that hazardous substances or pollutants or contaminants from Site activities are found to have been placed on or to have migrated.

“Waste Material” shall mean (1) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

“Work” shall mean all activities Respondent is required to perform under this Order.

“Work Plan” shall mean the plan entitled “Residential Soil Removal Work Plan” required to be submitted by Respondent, and any modifications made to the Work Plan in accordance with this Order, as approved by EPA pursuant to this Order.

#### **IV. FINDINGS OF FACT**

##### **Site Description and History**

7. In 1910, International Smelting & Refining Company (IS&R) began operating a copper smelter (also referred to as the “Tooele Smelter”) on the western slope of the Oquirrh Mountains approximately three miles east of Tooele, Utah. In 1914, Anaconda Copper Mining Company, later known as The Anaconda Company (Anaconda), acquired all of the stock of IS&R, which was then dissolved. A new corporation, International Smelting Company (ISC), was formed and Anaconda, the major shareholder of ISC, transferred the assets of the Tooele Smelter facility to ISC. In 1934, ISC changed its name to International Smelting & Refining Company, the same name as the company that first operated the facility. The newly formed IS&R owned and operated the Tooele Smelter until 1973 when IS&R was merged into Anaconda. The Respondent, Atlantic Richfield Company (AR), acquired Anaconda in 1977 and merged Anaconda into AR in 1981. The Respondent is the current owner of the former smelting and ore processing portions of the IS&R Site.

8. For more than sixty years, from 1910 until 1972, the Site was used for processing lead, copper and zinc ores. Copper smelting began in 1910 under the ownership of IS&R, with 4,000 tons of copper ore per day being processed. In 1912, IS&R built a lead smelter. Over the years, a lead-zinc sulfide flotation mill and a slag treatment plant for lead and zinc recovery were added. Copper production ceased in 1946, when the copper smelter closed. Lead smelting was discontinued in 1972. The smelter facility was demolished in 1972. From 1974 through 1981, the Anaconda Company constructed and operated a mill known as the Carr Fork Operations, just to the east of the IS&R in Pine Canyon. These activities resulted in the creation of large amounts of waste materials containing heavy metals, including lead and arsenic.

9. Wastes from smelting and refining operations including tailings piles, slag, settling ponds, land-filled material, and additional smelter wastes are present on portions of the IS&R Site, which comprises approximately 1,200 acres.

10. The Utah Mined Land Reclamation Act of May 1975, required reclamation for the Carr Fork Operations. Respondent performed reclamation activities in both areas, the IS&R and the Carr Fork operations, under the oversight of the Utah Division of Oil, Gas and Mining.

11. In 1990, the Utah Division of Oil, Gas and Mining released Respondent of further mining reclamation liability at the IS&R Site.

12. In accordance with Section 105 of CERCLA, the IS&R Site was listed on the National Priority List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, on July 27, 2000.

13. On or about September 18, 2001, AR entered into the Administrative Order on Consent for Remedial Investigation/Feasibility Study, EPA Docket No. CERCLA-08-2001-12, (“RI/FS Order”), to perform sampling activities at the Site to characterize the levels and extent of contamination. AR sampled the Pine Canyon residential area as part of the RI/FS. The RI/FS work is currently underway at the IS&R Site.

14. The Township of Pine Canyon is located on the western edge of the Site, comprises

approximately 2 square miles and includes approximately 100 residential properties. Approximately 200 people live in the impacted area of Pine Canyon Township, including approximately 20 children under the age of 14.

15. Heavy metal soil contamination in Pine Canyon Township is a result of historical flooding and the fallout of stack emissions from operations at the IS&R Site.

### **Release or Threatened Release**

16. Operation of the Tooele Smelter and Carr Forks facilities, including transport of materials, resulted in the deposition of Waste Material containing heavy metals, including lead and arsenic, in and at areas near the Site, in levels that may threaten human health or the environment.

17. From December 4, 2001, to June 13, 2004, AR, under EPA oversight in connection with the RI/FS Order, performed soil sampling activities at residences in Pine Canyon to define the areal extent of contamination. These sampling efforts identified elevated concentrations of contaminants of concern, including lead and arsenic, in the yard soils of various residences. AR also performed sampling of dust in several residences. The results of these sampling activities are included in reports submitted to EPA, entitled "Data Summary Report - Work Area No. 10, dated June 2002, Addendum No. 1 to Data Summary Report - Work Area No. 10, dated September 2002, and Lincoln Residential Sampling, dated June 10, 2004, all prepared by Anderson Engineering Company, Inc., and accepted by EPA on June 12, 2002, October 18, 2002 and June 23, 2004, respectively (collectively referred to as the Sampling Reports; the Addendum No. 1 to Data Summary Report - Work Area No. 10 (without attachments) and the Lincoln Residential Sampling report are attached to this Order collectively as Appendix 3.)

18. As described in the Sampling Reports, soil sample results from 2002-2004 from Pine Canyon showed elevated levels of lead ranging from "non-detect" to approximately 1880 mg/kg (1880 parts per million (ppm)) in residential yards. Arsenic was detected in levels of up to 150 ppm in residential soils. Lead levels in samples of household dust collected in Pine Canyon in 2002-4 ranged from 93 to 310 mg/kg.

### **Endangerment**

19. The above-described hazardous substances and pollutants and contaminants are contained in the residential soils in concentrations and quantities that may pose an imminent and substantial endangerment to the public health and the environment. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

20. Several migration pathways and exposure routes exist within the Pine Canyon residential area through which humans may be exposed to toxic concentrations of the contaminants of concern. The principle pathways within these residential areas include: ingestion of contaminated surface soils, ingestion and inhalation of airborne soil particles and contaminated dust, and ingestion of vegetables grown in contaminated soils.

21. Young children and adults may experience adverse health effects when exposed to elevated concentrations of lead and arsenic and other metals in the soil. The primary route of exposure is via incidental ingestion of the contaminated soil. Direct ingestion of contaminated soil can result from

actual consumption of soil or through the mouthing of contaminated objects. Children are the most susceptible to exposure through this pathway. Household dust containing various levels of contaminants can be ingested and inhaled through direct contact with indoor dust which is contaminated from outdoor soil and/or ingestion of food contaminated with indoor dust. Other routes of exposure include inhalation of wind-blown soil particles and dermal contact with the soil. Ingestion of vegetables grown in contaminated soils is another potential exposure route. Vegetables can actively take up contaminants from the soil and incorporate them. Vegetables can become contaminated through contaminants adhering to roots and deposition of wind-blown and/or rain-splashed particles onto plant surfaces.

22. Outlined below are the specific endangerment criteria for the major contaminants of concern found on the Site:

---

**Arsenic** – Excess exposure to arsenic is known to cause a variety of adverse health effects in humans. These effects depend on exposure level and duration. Arsenic is a known human carcinogen. Inhalation exposure is associated with increased risk of lung, gastrointestinal, renal or bladder cancer. Oral exposure to arsenic is associated with skin, liver, and bladder cancer. At very high doses, oral exposure to arsenic elicits nausea and vomiting. Lower doses over a chronic time period may elicit skin abnormalities, such as hyperkeratosis; kidney, and liver toxicity.

---

**Lead** – At high doses lead exposure is associated with adverse effects on reproduction and development, as well inhibition of heme synthesis. At lower doses, impairment of the nervous system in young children is considered to be of greatest concern. Younger children are more susceptible to lead exposure because they absorb lead from their gastrointestinal tracts at a greater rate than adults do, their neurological systems are still rapidly developing, and they have more direct contact with soil and indoor dust than adults do. These neurological effects manifest as decreased I.Q., shortened attention span, and decreased hand and eye coordination. EPA classifies lead as a B2 carcinogen. Studies in animals show an increased incidence of kidney tumors in association with very high levels of lead exposure.

23. In June 2003, EPA completed a risk assessment entitled "Baseline Human Health Risk Assessment for the International Smelting and Refining Site Tooele County, Utah (Final)" USEPA, Region 8, June 2003 ("EPA Risk Assessment") for the Pine Canyon Residential Area based on the Sampling Reports. Health based action levels were established by EPA based on the EPA Risk Assessment.

### **Respondent**

24. Respondent is Atlantic Richfield Company. Atlantic Richfield Company is a Delaware corporation registered in the State of Utah as a qualified, active corporation in good standing, organized in the State of Utah on April 30, 1985.

25. Respondent is the current owner and was the "owner" and/or "operator" at the IS&R Site at the time of disposal of hazardous substances or pollutants or contaminants at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

## **Response Actions**

26. There have been prior CERCLA response actions at the Site (the RI/FS), and specifically for Pine Canyon Township, including the sampling efforts and risk assessment described above. In addition, on July 16, 2004, EPA issued an Action Memorandum for residential soil removal at the Pine Canyon Township Residential Area of the International Smelting and Refining Site. The Action Memorandum determined that approximately 20 residences will be required to have soil removed to address the metal contamination present in the yard soils.

27. EPA has incurred response costs in both its sampling and oversight activities at and in connection with the Site.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

28. Based on the Findings of Fact set forth above and the Administrative Record supporting this Removal Action, EPA has determined that:

- a. The Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The Waste Material found at the Site, as identified in the Findings of Fact above, include “hazardous substance(s)” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and “pollutants or contaminants” as defined by section 101(33) of CERCLA, 42 U.S.C. § 9601(33). These include lead and arsenic.
- c. Respondent is a “person” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for performance of response actions and for response costs incurred and to be incurred at the Site. Respondent was the “owner” and/or “operator” of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). Respondent also accepted hazardous substances for transport to the facility, within the meaning of section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The conditions present at the Site constitute an imminent and substantial endangerment to public health or welfare or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a). These conditions include, but are not limited to: actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of metals, including lead and arsenic, in the soils at the Site and the proximity of residential areas and other areas to which people and animals have access; and the high levels of hazardous substances or



pollutants or contaminants in soils largely at or near the surface that may migrate, due to wind and tracking or other transport of soils by human activity.

g. The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, are not inconsistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

## **VI. ORDER**

29. Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, EPA hereby orders that Respondent comply with the following provisions, including, but not limited to, all attachments (appendices) to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

### **Notice of Intent to Comply**

30. Respondent shall notify EPA in writing within ten (10) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order by Respondent.

### **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

31. a. Respondent shall perform the Removal Actions or retain a contractor(s) to perform the Removal Actions. Respondent shall notify EPA of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within ten (10) business days of the effective date of this Order. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Removal Actions under this Order at least fifteen (15) days prior to commencement of such Removal Actions. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by Respondent, or of Respondent's choice of itself to do the Removal Actions. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the Removal Actions itself within five (5) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent's name and qualifications within five (5) business days of EPA's disapproval.

b. Within ten (10) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present onsite or readily available during Site Work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name and qualifications within five (5) business days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

32. EPA has designated Joshua Knight, Superfund Remedial Section, Region 8, as its Project

Coordinator. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to:

Joshua Knight  
International Smelting & Refining Remedial Project Manager  
Superfund Remedial Section, 8EPR-SR  
US EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466  
Phone: (303) 312-6535  
Fax: (303) 312-6877

### **Work to Be Performed**

33. Respondent shall perform, at a minimum, all activities contained in the Residential Soil Removal Work Plan, as approved by EPA pursuant to this Order. The Residential Soil Removal Work Plan shall describe Work for the removal of soils contaminated with lead and arsenic at the Site and preparation and submittal of a final report on the removal activities. The required Work shall include categorization and inventory of soils as necessary for the residences within the Pine Canyon residential area; excavation and disposal of the contaminated soil at approved treatment or disposal facility(s); and restoration of the excavated areas with clean soil and native seed to prevent erosion. The Work will involve excavation of soils containing elevated levels of lead and arsenic from residential properties at the Site. For the identified residential properties, the top 18 inches of existing soil will be excavated and transported off-site for disposal. Permeable geotextile filter fabric will be placed on the sub-grade and covered with clean fill. Surface features will be replaced or returned as nearly as possible to "as was" condition. To the extent practicable, the Work shall attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws, as identified in the Work Plan approved under this Order. Respondent shall perform and complete all activities in the Work Plan in accordance with the schedule included therein.

### **Work Plan**

a. Within thirty (30) days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Residential Soil Removal Work Plan ("Work Plan") for performing the Removal Actions set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by this Order, including identification of all ARARs, subject to EPA approval.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within ten (10) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site Work pursuant to the EPA approved Work Plan. Respondent shall not commence or undertake any Removal Actions at the Site without prior EPA approval.

### 34. Additional Plans and Reporting

#### Health and Safety Plan (HASP)

a. Within thirty (30) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 C.F.R. Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the Removal Actions.

#### Quality Assurance and Sampling (QAPP/QASP)

b. Within thirty (30) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a draft Quality Assurance Project Plan (QAPP) or Quality Assurance Sampling Plan (QASP). In developing the QAPP/QASP, the Respondent shall consider and utilize the following EPA guidance documents: "Guidelines and Specifications for Preparing Quality Assurance Project Plan (QAMS-004/80)" and "Emergency Response Branch Region VIII Quality Assurance Project Plan (ERB Region VIII QAPP)." The sixteen elements listed in QAMS-005/80 shall be addressed. Respondent shall incorporate all changes to the QAPP/QASP recommended by EPA.

c. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall adhere to the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08; and the Representative Sampling Guidance for soil, air, ecology, waste, and water as this information becomes finalized and available.

d. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

e. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA not less than five (5) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

## **Reporting**

f. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every seventh (7th) day after the date of receipt of EPA's approval of the Work Plan until the cessation of the Removal Actions required under this Order, unless otherwise directed in writing by the EPA Project Coordinator. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

g. Any Respondent and Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice of this Order to the transferee and written notice to EPA of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI., Paragraphs 35 and 36 of this Order (Access to Property and Information).

## **Final Report**

h. Within twenty-one (21) days after completion of all Removal Actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the Removal Actions (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## **Access to Property and Information**

35. Respondent shall provide and/or obtain access to the Site and off-site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Utah representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Respondent shall

submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order.

36. Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the effective date of this Order, or as otherwise specified in writing by the EPA Project Coordinator. Respondent shall immediately notify EPA if, after using its best efforts, Respondent is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the Removal Actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

### **Record Retention, Documentation, Availability of Information**

37. Respondent shall preserve all documents and information relating to Work performed under this Order, or relating to the hazardous substances found on, or released from, the Site, for ten years following completion of the Removal Actions required by this Order. At the end of this ten year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the ten-year period at the written request of EPA.

38. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

39. Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

### **Off-Site Shipments**

40. All hazardous substances or pollutants or contaminants removed offsite pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section

121(d)(3) of CERCLA and the above directive. Unless impracticable, prior notification of out-of-state waste shipments should be given to the EPA Project Coordinator consistent with OSWER Directive 9330.2-07.

### **Compliance With Other Laws**

41. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. (see “The Superfund Removal Procedures for Consideration of ARARs During Removal Actions,” OSWER Directive No. 9360.3-02, August 1991).

### **Emergency Response and Notification of Releases**

42. Respondent shall notify EPA at least 48 hours prior to performing any on-site Work pursuant to the Work Plan. Respondent shall not commence or undertake any Removal Actions at the Site without prior EPA approval and except in conformance with the terms of this Order.

43. If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the EPA Project Coordinator or, in the event of his or her unavailability, shall notify the National Response Center at (800) 424-8802 of the incident or Site conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

44. In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's EPA Project Coordinator at (303) 312-6848 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.

## **VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR**

45. The EPA Project Coordinator shall be responsible for overseeing the proper and complete implementation of this Order. The Project Coordinator shall have the authority vested in an OSC by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required

by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Site.

Absence of the EPA Project Coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by the EPA Project Coordinator.

46. EPA and Respondent shall have the right to change their respective, designated Project Coordinators. EPA shall notify Respondent, and Respondent shall notify EPA five (5) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

### **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

47. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

### **IX. RESERVATION OF RIGHTS**

48. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health or welfare or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances or pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

### **X. OTHER CLAIMS**

49. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

50. This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

51. Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person

may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

## **XI. MODIFICATIONS**

52. Modifications to any plan or schedule under this Order may be made in writing by the EPA Project Coordinator or at the EPA Project Coordinator's oral direction. If the EPA Project Coordinator makes an oral modification, it will be memorialized in writing within seven (7) days; provided, however, that the effective date of the modification shall be the date of the EPA Project Coordinator's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the undersigned EPA program director.

53. If Respondent seeks permission to deviate from any approved plan or schedule or the Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis.

54. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order unless it is formally modified. No failure or delay by EPA to acknowledge, or make a decision with regard to, any request by Respondent to deviate from any approved plan or schedule or from the requirements and procedures set forth in the Work Plan shall relieve Respondent of its obligations to comply with all requirements of this Order unless it is formally modified in accordance with the procedures set forth herein.

## **XII. NOTICE OF COMPLETION**

55. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide notice to Respondent. If EPA determines that any Removal Actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

## **XIII. ACCESS TO ADMINISTRATIVE RECORD**

56. The Administrative Record supporting these Removal Actions is available for review during normal business hours at the EPA Region 8 Superfund Records Center on the 5<sup>th</sup> floor, at 999 18<sup>th</sup> Street, in Denver, CO.

## **XIV. OPPORTUNITY TO CONFER**

57. Within five (5) days after the effective date of this Order, Respondent may request a



conference with EPA. Any such conference shall be held within seven (7) days after the effective date unless extended by agreement of EPA and Respondent. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

58. If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within three (3) days following the conference, or within ten (10) days following issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this Paragraph, shall be directed to James Stearns, Enforcement Attorney, U.S. EPA (8ENF-L), 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466, telephone (303) 312-6912.

## **XV. INSURANCE**

59. At least seven (7) days prior to commencing any on-site Work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XVI. ADDITIONAL REMOVAL ACTIONS**

60. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health or welfare or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health or welfare or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The draft Work Plan shall provide a description of, and an expeditious schedule for, the action required by EPA as additional removal actions. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within (20) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the provisions and schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA at least 48 hours prior to performing any on-site work pursuant to the EPA approved Work Plan. Respondent shall not commence or undertake any removal actions at the Site without prior EPA approval. This Section does not alter or diminish the EPA Project Coordinator's authority to make oral modifications to any plan or schedule pursuant to Section XI.

## **XVII. SEVERABILITY**

61. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### **XVIII. EFFECTIVE DATE**

62. This Order shall be effective five (5) days after the Order is signed by EPA.

#### **IT IS SO ORDERED:**

By: **SIGNED** Date: **7-22-04**  
Douglas Skie, Director  
Preparedness, Assessment, and Emergency Response Program  
Office of Ecosystems Protection and Remediation  
U.S. Environmental Protection Agency, Region 8

EFFECTIVE DATE: **7-27-04**

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JULY 22, 2004.**